

48A C.J.S. Judges § 374

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

X. Special or Substitute Judges and Like Judicial Officers

C. Authority, Powers, and Duties of Special or Substitute Judge

§ 374. Objections to authority of a special or substitute judge and waiver thereof

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#) 19

Objections to the authority of a special or substitute judge may be made, but such objections may be waived by act or omission of the party.

The authority of a special or substitute judge may be challenged by a timely objection¹ made at or before trial.² However, a party may not submit matters to and await rulings by a special judge before objecting to the special judge's presence in the action.³ Although the parties cannot be estopped by their consent to deny jurisdiction,⁴ and objections as to a jurisdictional requirement may be raised at any time,⁵ if jurisdiction exists, objections to the authority of a special or substitute judge are waived by a failure to make timely objection during trial.⁶ For instance, a defendant's failure to object to a substitute trial judge's lack of certification that he or she has become familiar with the record of the trial waives that claim of error.⁷

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Footnotes

1

Ind.—[State ex rel. Crowmer v. Superior Court of Marion County](#), 237 Ind. 633, 146 N.E.2d 88 (1957).

Oklahoma.—[Gammell v. State](#), 1976 OK CR 67, 547 P.2d 1307 (Oklahoma Crim. App. 1976).

Objection to selection of special or substitute judge, see § 363.

Presiding pursuant to expired assignment

Tex.—[Wilson v. State](#), 977 S.W.2d 379 (Tex. Crim. App. 1998).

2 Okla.—[Burk v. Burk](#), 1978 OK 43, 577 P.2d 65 (Okla. 1978).

3 Ind.—[Bostic v. State](#), 980 N.E.2d 335 (Ind. Ct. App. 2012).

4 § 343.

5 Wash.—[State v. McNairy](#), 20 Wash. App. 438, 580 P.2d 650 (Div. 3 1978).

6 Mo.—[Buchanan v. Buchanan](#), 167 S.W.3d 698 (Mo. 2005).

Tex.—[Bonilla v. State](#), 740 S.W.2d 583 (Tex. App. Houston 1st Dist. 1987), petition for discretionary review refused, (Apr. 27, 1988).

7 Md.—[Gibson v. State](#), 334 Md. 44, 637 A.2d 1204 (1994).

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